

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

June 17, 2003

GSBCA 16116-RELO

In the Matter of JENNY YOON

Jenny Yoon, APO Area Pacific, Claimant.

Eileen M. McFarland, Chief, Civilian Personnel Division, Headquarters, Eighth United States Army, Department of the Army, APO Area Pacific, appearing for Department of the Army.

DeGRAFF, Board Judge.

When an agency transfers an employee in the interest of the Government from one official duty station to another for permanent duty, the agency is required to pay some of the employee's relocation expenses.

Background

In 2002, the Department of the Army (Army) issued a job announcement for a position in Korea. Although the Army had advertised the position once before, it remained unfilled. The announcement listed the area of consideration as Korea-wide, and explained this meant individuals residing in Korea. The announcement also said, "Permanent change of station (PCS) funds will be authorized."

Jenny Yoon, who was employed by the Army in Texas, applied for the position in Korea. Although Ms. Yoon was not within the Korea-wide area of consideration, the Army accepted her application based upon an internal policy that required personnel offices to accept applications from current Army employees regardless of location. Ms. Yoon was the only applicant who was eligible and available to fill the position.

On July 5, 2002, the Civilian Personnel Advisory Center (CPAC) that serviced Korea asked the Eighth United States Army Civilian Recruiting Office in Seattle, Washington, to offer the position to Ms. Yoon. The CPAC advised the Seattle office that PCS benefits were not authorized. On July 15, the CPAC asked the Seattle office for an update regarding the status of the offer to Ms. Yoon.

On July 17, the Seattle office told the CPAC that Ms. Yoon had accepted the position. The Seattle office sent Ms. Yoon a "Selection and PCS Notice" stating that her travel to Korea had to begin as soon as possible and setting September 8 as her tentative date for reporting for duty there. The notice also told her to complete a request for travel orders, and explained that the Army would issue travel orders to her and would provide her with a variety of PCS benefits, including travel and transportation to Korea, when she met all the conditions of employment. So far as we know, Ms. Yoon met the required conditions of employment.

When the CPAC learned that Ms. Yoon had accepted the job offer, it asked the Seattle office whether Ms. Yoon understood she would not receive any PCS benefits. When Ms. Yoon learned that an issue had arisen regarding her PCS benefits, she pointed out to the Seattle office that the vacancy announcement said PCS benefits would be paid and she asked that someone explain why it appeared the Army would not authorize those benefits. The Seattle office passed Ms. Yoon's question to the CPAC, which responded on July 31, saying management had decided no PCS benefits could be authorized due to budget constraints. Also, said the CPAC, when the vacancy announcement said the area of consideration was Korea-wide and PCS benefits would be paid, this meant PCS benefits would be available only for someone already residing in Korea.

On August 5, the Seattle office sent the CPAC's response to Ms. Yoon. Although Ms. Yoon had already accepted the position, the Seattle office asked if she would accept the position without being paid PCS benefits. On August 12, Ms. Yoon said she would accept the position, although she had the impression that PCS benefits were authorized. On August 13, the Seattle office informed Ms. Yoon that the Army would not issue any travel orders to her for her transfer to Korea.

On August 20, the CPAC notified the Seattle office that because management had no funds to pay Ms. Yoon's PCS costs, it wanted to withdraw the offer from her. The CPAC said even if Ms. Yoon agreed to pay her own way to Korea, she could file a claim and the Army would probably have to pay her, because the vacancy announcement said PCS benefits would be paid.

On August 22, the CPAC informed the Seattle office that, after conferring with its attorney, it had decided not to rescind the job offer to Ms. Yoon and not to pay her PCS benefits. The CPAC attorney believed the transfer to Korea was primarily for Ms. Yoon's benefit, not primarily for the benefit of the Government, because there was usually an ample pool of local candidates who could have filled the vacancy. He also mentioned Ms. Yoon had personal reasons for wanting to transfer to Korea. Finally, he noted the Joint Travel Regulations allowed an office to decide whether to offer PCS benefits at the time a job offer was extended.

Ms. Yoon left Texas on August 30, and paid her travel and transportation costs in connection with her transfer to Korea. Several of Ms. Yoon's supervisors recommended that the Army reimburse her PCS expenses. The Army, however, decided Ms. Yoon should not be paid PCS benefits because the job announcement authorized PCS benefits only for transfers within Korea. The Army believes the Seattle office made a mistake when it extended a job offer that included PCS benefits. It also says Ms. Yoon could have decided not to move when she learned the Army would not reimburse her PCS expenses.

Ms. Yoon asks us to review the Army's decision. She considered the PCS benefits to be a recruitment incentive for her to transfer to Korea. She says when she was offered the position, she quickly began making arrangements so she could leave Texas and report for duty in Korea by September 9, and her office in Texas hired someone to replace her. When she learned shortly before she was due to depart that the Army would not pay her PCS benefits, she decided to transfer and apply for the benefits when she arrived in Korea.

Discussion

By statute, when an employee is transferred in the interest of the Government from one official duty station to another for permanent duty, the Government is required to pay for some relocation expenses and may, if it chooses, pay for other relocation expenses. Among the expenses the Government is required to pay are those for transportation and per diem for the employee and his or her dependents, shipment and temporary storage of household goods, miscellaneous costs, and real estate transactions, including the settlement of an unexpired lease at the old duty station. 5 U.S.C. §§ 5724, 5724a (2000). Thus, if Ms. Yoon's transfer was in the interest of the Government, she is entitled to be reimbursed for these items.

The Joint Travel Regulations (JTR), which apply to civilian employees of the Department of Defense, state, "Budget constraints alone do not justify the denial of PCS allowances." JTR C4100-B.3 (Dec. 1, 1999).¹ The JTR required the Army to make every effort to determine prior to advertising a vacant position whether it would pay PCS allowances, so this information could be provided while the position was advertised. If the Army determined that well-qualified candidates existed within a particular area, it could restrict the area of recruitment and/or state that PCS benefits were not offered. The Army did not have to determine whether a transfer would be in the interest of the Government, however, until after it referred applicants to the selecting official. In making its determination, the Army was supposed to consider factors such as whether the position was difficult to fill. If the Army decided not to pay relocation expenses, that decision was supposed to be reduced to writing. If the Army did not conduct any interviews, it was supposed to notify in writing the person selected to fill the position whether it would pay relocation expenses. If the Army determined that a transfer was primarily in an employee's interest, not primarily in the Government's interest, it was supposed to advise the employee at the time the offer was extended that no PCS expenses would be paid. JTR C4100-A.2, -B.

According to the Army, the job announcement should be read to say that PCS benefits were authorized only for persons already located in Korea, because the announcement listed the area of consideration as Korea-wide. Although the announcement limited the area of consideration, it also said plainly that PCS funds "will be authorized." The announcement did not say that PCS benefits were available only for persons already located in Korea, and the Army knew when it issued the announcement that its internal policy required it to accept applications from current Army employees regardless of where they were located. We will not read the announcement as does the Army, because it would add a restriction regarding the payment of PCS benefits that was not made clear in the announcement itself.

¹ These regulations were in effect when Ms. Yoon reported for duty in Korea.

The Army says the Seattle office made a mistake when it extended an offer to Ms. Yoon that included PCS benefits, because the CPAC had previously told the Seattle office that PCS benefits were not authorized. It does not seem to us that the Seattle office made a mistake. After the Army selected Ms. Yoon to fill the vacant position, if it determined her transfer was not in the interest of the Government, it was required to reduce its decision to writing and, when it extended its job offer, to notify her that it would not provide any PCS benefits. The Army never reduced to writing any reason why Ms. Yoon's transfer would not be in the Government's interest and when it extended its job offer, it did not tell her it would not provide any PCS benefits. It was only after Ms. Yoon accepted the offer that the Army told her it did not want to pay PCS benefits. The Army's decision was based upon budgetary constraints, although as the JTR make clear, budgetary constraints alone do not justify denying PCS benefits. The Seattle office's action in making an offer to Ms. Yoon that included PCS benefits was consistent with the terms of the job announcement and the JTR, and does not appear to constitute a mistake.

The Army speculates that Ms. Yoon could have decided not to transfer to Korea once she learned the Army did not intend to provide PCS benefits. Even if this is true, it is irrelevant, because her eligibility for benefits does not depend upon whether she had the ability to rearrange her affairs and remain in Texas after she learned that the benefits she expected to receive would not be forthcoming. Her eligibility depends upon whether her transfer was in the Government's interest. Ms. Yoon's decision to go ahead with the transfer after she learned the Army did not intend to provide PCS benefits does not bar her claim. Ross Richardson, GSBCA 15286-RELO, 00-2 BCA ¶ 31,131.

The facts are consistent with a determination that it was in the Government's interest to transfer Ms. Yoon to Korea. The job announcement was the Army's second attempt to find a qualified applicant to fill the vacant position. Although the announcement said the area of consideration was Korea-wide, it also said PCS benefits would be authorized and the Army knew it would accept applicants from anywhere in the world, so long as they were already employed by the Army. The second attempt to find someone to fill the vacancy showed Ms. Yoon to be the only eligible, available applicant. The Army offered her the position and she accepted. The Army told Ms. Yoon it would issue travel orders and provide her with a variety of PCS benefits, including travel and transportation to Korea. All of these facts establish that the Army determined Ms. Yoon's transfer to be in the Government's interest, and such a determination was reasonable.

The Army's characterization of Ms. Yoon's transfer as not being in the interest of the Government is contrary to the facts and, as such, we cannot endorse it. If there had been an ample pool of local candidates who could have filled the vacancy, we expect that advertising the vacancy twice would have yielded more than one qualified, available applicant. Also, even though Ms. Yoon may have had personal reasons for wanting to come to Korea, this does not mean the transfer was primarily for her benefit. Robert Bailey, GSBCA 15935-RELO (Mar. 25, 2003). Finally, if the Army had a reason other than budget constraints for deciding that Ms. Yoon's transfer was not in the interest of the Government, we assume it would have complied with the JTR by documenting its decision and notifying Ms. Yoon before it offered her the position that no PCS benefits would be paid. However, the record contains no such documentation and it was not until after Ms. Yoon accepted the position that the Army said it would not provide PCS benefits due to budget constraints. The Army

has not shown a reasonable basis for deciding that Ms. Yoon's transfer was not in the interest of the Government.

The claim is granted. The Army is obligated to reimburse Ms. Yoon for transportation and per diem costs, the costs of shipment and temporary storage of household goods, miscellaneous costs, and the costs of real estate transactions, including the settlement of an unexpired lease at her old duty station in Texas. Reimbursement is subject to the regulations in effect in September 2002, when she reported for duty in Korea.

MARTHA H. DeGRAFF
Board Judge